

**COURT OF APPEALS
DECISION
DATED AND FILED**

DECEMBER 16, 1997

**Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin**

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 97-1699-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MICHAEL REYES,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Outagamie County: JAMES T. BAYORGEON, Judge. *Affirmed.*

Before Cane, P.J., Myse and Hoover, JJ.

PER CURIAM. Michael Reyes appeals a conviction for possession of marijuana with intent to deliver, having pled no contest to the charge. Reyes argues that the police violated the Fourth Amendment when they made a warrantless entry into his living room and observed a marijuana smoking pipe. This observation led to his arrest and discovery of additional evidence. Reyes

seeks to suppress the pipe and other evidence on the ground that the police lacked valid consent to enter the living room and to make “plain view” discovery of contraband therein. The trial court ruled that Reyes had consented to the police’s entry into his living room and that the marijuana pipe was in “plain view.” According to Reyes, the police lacked valid consent for several reasons: (1) the police never informed Reyes they were looking for drugs; (2) Reyes did not give the police consent to search; (3) Reyes merely gave them permission to “come on in,” not to enter the living room *per se*; and (4) consent to enter the living room is not the equivalent of consent to roam around the living room. Reyes is essentially arguing that the police must have his express consent to roam and eye the room before they may make a valid plain view observation. We reject Reyes’ arguments and affirm his conviction.

The consent and plain view doctrines are exceptions to the Fourth Amendment warrant requirement. *See Texas v. Brown*, 460 U.S. 730, 735-36 (1983). Here, the police merely needed Reyes’ consent to enter to make a valid plain view observation. Consent to enter is not the same as consent to search; the police could obtain Reyes’ consent to enter without seeking further his consent to search for drugs and without notifying him that they were looking for drugs. *See Lewis v. United States*, 385 U.S. 206, 210-11 (1966); *State v. Johnston*, 184 Wis.2d 794, 807-08, 518 N.W.2d 759, 762-63 (1994). The police obtained Reyes’ consent to enter the living room in two ways. First, Reyes told the police that they could “come on in,” without qualification. Reyes’ “come on in” invitation inherently granted consent to enter the living room; this room was the first room “in” the residence beyond the doorway. Second, Reyes essentially led the police from the doorway into the living room; he followed his baby daughter into the living room without telling the police to stay at the door. Reyes’ movement

implicitly led the way and thereby tacitly conferred consent for the police to enter the living room. *See State v. Douglas*, 123 Wis.2d 13, 18-19, 365 N.W.2d 580, 582-83 (1985); *see also United States v. Turbyfill*, 525 F.2d 57, 59 (8th Cir. 1975).

Last, Reyes' consent to enter the living room inherently conferred consent to move around the room, at least in the absence of express instructions by Reyes to the contrary. Here, Reyes never instructed police to remain in one part of the room. Once they entered without objection or limitation, they could reasonably move and look around the room until Reyes told them to stop or leave. The police also did not need Reyes' consent to search for drugs in order to move and look around the living room. *See Lewis*, 385 U.S. at 210-11. In essence, Reyes is arguing that he needed to confer consent to a plain view observation before the police could make a lawful plain view observation; Reyes evidently believes that he may grant the police consent to enter the living room while withholding his consent for them to make plain view observations of things in the room. We know of no authority for such a proposition. The plain view doctrine does not depend on the occupant's consent to the observation. *See United States v. Dichiarinte*, 445 F.2d 126, 130 (7th Cir. 1971). As long as the police were lawfully in the living room, they could make plain view observations of anything in the room. *See State v. Guy*, 172 Wis.2d 86, 101-02, 492 N.W.2d 311, 317 (1992). In short, they did not need Reyes' express consent to roam and eye the room in order to make a valid plain view observation under the Fourth Amendment.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

